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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/747,793	12/29/2003	James N. Tuozzo	JNT/01	6442

7590 10/25/2006  
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EXAMINER

HENDERSON, MARK T

ART UNIT PAPER NUMBER

3722

DATE MAILED: 10/25/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

**Application No.**

10/747,793

**Applicant(s)**

TUOZZO, JAMES N.

**Examiner**

Mark T. Henderson

**Art Unit**

3722

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 04 October 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1,3-7,9-11 and 13-21 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 1,3-7,9-11 and 13-20 is/are allowed.
- 6) ☒ Claim(s) 21 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                                | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED OFFICE ACTION**

### **Faxing of Responses to Office Actions**

In order to reduce pendency and avoid potential delays, TC 3700 is encouraging FAXing or responses to Office Actions directly into the Group at (571) 273-8300. This practice may be used for filing papers, which require a fee by applicants who authorize charges to a PTO deposit account. Please identify the examiner and art unit at the top of your cover sheet. Papers submitted via FAX into TC 3700 will be promptly forwarded to the examiner.

1. Claims 1, 3, 7, 9, 14-16, and 18 have been amended for further examination. After further review and consideration, the examiner has withdrawn the finality of the last office action and has submitted a new grounds of rejection below.

### ***Claim Rejections - 35 USC § 102***

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

2. Claim 21 is rejected under 35 U.S.C. 102(e) as being anticipated by Huene et al (7,120,968).

Huene et al discloses in Fig. 5 and 7, a paper fastening attachment for use with a fastener (90) having a base (96) including two ends having bendable (or flexible) prongs (92) relative to the base (96); wherein the attachment comprises: a prong cover (62) shaped to slideably engage and cover the prong (92); wherein the cover comprises an orifice (70 and 76) to receive the prong (92) and at least one tab (68 in Fig. 5, or 30 in Fig. 2) is hingedly (flexible as stated in Col. 2, lines 49-50) depending from the orifice and terminating in a free end; wherein the prong cover and tab are sized (Col. 3, lines 65-67).

In regards to **Claim 21**, wherein the prong cover and tab a sized to fit through hole punched sheets, a recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim. In a claim drawn to a process of making, the intended use must result in a manipulative difference as compared to the prior art. Therefore, the prong cover and tab can be sized to fit through any desirable element.

***Allowable Subject Matter***

3. Claims 1, 3-7, 9-11, 13-20 are allowed.

4. The following is a statement of reasons for the indication of allowable subject matter: No prior art of record discloses or fairly teaches a paper fastening arrangement or fastener comprising: a base including two ends having foldable legs; an extension shaped to slideably engage one on the legs; the extension having an orifice or cavity to cover the leg; a foldable tab depending from the extension and having a flange bent relative to the guide tab to form a recess between the flange and the guide tab, whereby the recess receives the leg; and including all of the other limitations of the independent claims.

Huene et al is the closest reference similar to applicant's invention. However, Huene et al does not disclose a foldable guide tab depending from the extension having a flange to form a recess.

#### ***Response to Arguments***

5. Applicant's arguments with respect to claim 21 have been considered but are moot in view of the new ground(s) of rejection.

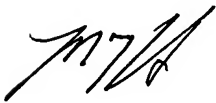
Huene et al is now used to disclose a paper fastener as claimed in Claim 21.

***Prior Art***

6. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Carman, Murphy, Henry, Chamberlin, and Wagner disclose similar paper fasteners.

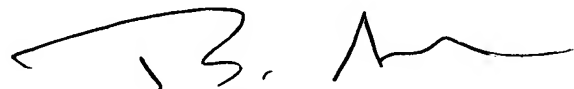
**Contact Information**

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Mark T. Henderson whose telephone number is (571) 272-4477, and informal fax number is (571) 273-4477. The examiner can be reached on Monday-Friday from 9:00AM to 3:45PM. If attempts to reach the examiner by telephone are unsuccessful, the Examiner Supervisor, Monica Carter, can be reached at (571) 272-4475. The formal fax number for TC 3700 is (571) 273-8300.



MTH

October 22, 2006



BOYER D. ASHLEY  
SUPERVISORY PATENT EXAMINER